

REMARKS

Claims 1-16 and 25 are cancelled. Claims 17-22 and 26-28 are withdrawn from consideration. Claims 23-24 and 29-48 are pending.

Restriction Requirement

The Restriction Requirement sets forth a requirement for restriction between Group I – claims 1-2, drawn to a method of stimulating an ATP-independent cytotoxic factor; Group II – claims 3-4 drawn to a method of delineating virulent and avirulent microorganisms; Group III – claims 5-16 drawn to a method of isolating a cytotoxic factor; Group IV – claims 17-20 drawn to a method of treating cancers; Group V – claims 21-22 drawn to a method of treating cell death susceptibility; Group VI – claims 23-24 and 29-31 drawn to a method of modulating a rate of cell death; and Group VII - claim 25 drawn to a method of treating a condition related to resistance to cell death.

Applicants elect, with traverse, to prosecute Group VI, claims 23-24 and 29-31 drawn to a method of modulating a rate of cell death. Applicants traverse the restriction, with respect to Groups IV, V, and VI, on the grounds that the high degree of relatedness between the methods results in a *de minimis* amount of additional subject matter in relation to Group VI alone and, thus, a *de minimis* amount of additional searching. Accordingly, in the interest of efficiency and cost to both the applicant and the Patent Office, applicants respectfully request that Groups IV, V, and VI be searched and examined together.

With respect to Group VI, the Restriction Requirement further requires a species election, contending that the included claims read on a genus of patentably distinct species, namely the various cytotoxic factors. Without accepting the position set forth in the Restriction Requirement, applicants, in the interest of moving this prosecution forward, elect azurin as the first

species for examination. Claims 23-24, 29-30, and 32-47 read on this elected species.

Applicants note that, on pages 3-4 of the Office Action, there is a description of species election requirements regarding claims 18, 19, and 20. These requirements describe these claims as being part of "Group VI". Moreover, this language is placed between similar species election statements relating to Group III, above, and Group V, below. Accordingly, applicants believe that this species election should refer to Group IV, which is directed to claims 17-20 and 26-28. For this reason, applicants have not responded to the species election set forth on pages 3-4 that ends on page 4, line 8; but have responded to the species election requirement for Group VI set forth on page 4, lines 13-18.

Amendments to the Claims

No new matter is added in the new claims and amendments presented above. The new and amended claims are supported by the following references to the specification and the original claims:

Claim 23 – original claims 17 and 23,

Claim 24 – original claim 24,

Claim 29 – original claim 29,

Claim 30 – original claims 23 and 30,

Claim 31 – original claims 23 and 31,

Claim 32 – original claim 32 and page 23, line 3,

Claim 33 – original claim 17,

Claim 34 – original claim 18,

Claim 35 – original claim 18,
Claim 36 – example 15,
Claim 37 – example 13,
Claim 38 – example 13,
Claim 39 – original claim 17,
Claim 40 – paragraph 53 and example 15,
Claim 41 – example 15,
Claim 42 – paragraph 53 and example 15,
Claim 43 – paragraph 53 and example 15,
Claim 44 – paragraph 53 and example 15,
Claim 45 – original claim 18,
Claim 46 – original claim 18,
Claim 47 – paragraph 53 and example 15, and
Claim 48 – paragraph 53 and example 15.

Applicants submit that the present application is now ready for examination on the merits. If, for any reason, the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorney at (312) 321-4229.

Respectfully submitted,

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